

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**R.H., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ARMY  
NATIONAL GUARD -- ALABAMA, Bremen,  
AL, Employer**

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**Docket No. 07-149  
Issued: May 17, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 23, 2006 appellant filed a timely appeal from the July 27, 2006 decision of the Office of Workers' Compensation Programs denying his claim for a hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that he sustained hearing loss in the performance of duty.

**FACTUAL HISTORY**

On October 12, 2005 appellant, a 50-year-old retired machinist, filed an occupational disease claim alleging hearing loss and ringing in both ears. In support of his claim, appellant submitted annual hearing conservation data reports administered by the employing establishment, dated 1991 to 2002 and an audiometric examination report from ENT Associates of Alabama, dated August 6, 2002. The annual hearing conservation data reports showed a

gradual increase in hearing loss from 1991 to 2002. The narrative interpretation of the August 6, 2002 audiogram stated that appellant had a mild left ear sensorineural loss at four kilohertz (kHz), a mild right ear conductive loss at one and two kHz and a mild right ear sensorineural loss at four to eight kHz.

Appellant also submitted the results of environmental noise tests conducted in 1997 at various locations in his workplace. In a narrative statement, appellant described his federal employment, which lasted from February 1991 to June 2005. He used grinders, saws, hammers, lathes, mills and grinding machines 10 hours per day, four days per week. Appellant was provided with and used hearing protection during this time. He stated that he was employed as a welder with two private companies from 1979 to 1991, but was not provided with and did not use ear protection until 1985. Appellant stated that he was unaware that he had a hearing loss until 2002, when three hearing tests confirmed the fact.

On April 28, 2006 the Office informed appellant that a second opinion evaluation had been scheduled to determine the extent of his noise-induced hearing loss. On May 25, 2006 appellant was examined by Dr. Robert Sciacca, a Board-certified otolaryngologist. The statement of accepted facts provided to Dr. Sciacca indicated that, while appellant was employed by the employing establishment, he was exposed to noise levels above 85 decibels and was provided with earmuffs and foam earplugs. It noted that appellant was employed as a welder with nonfederal employers from December 1979 to February 1991, that he had no military history<sup>1</sup> or hobbies involving exposure to loud noise.<sup>2</sup>

Dr. Sciacca diagnosed bilateral mild to moderate high frequency sensorineural hearing loss. Based on the medical records provided by the Office, he found that, when appellant began federal employment in 1991, he had normal hearing in his left ear and mild high frequency hearing loss in his right ear. Dr. Sciacca reported that appellant currently had bilateral hearing loss in the low and mid frequencies, an increased left ear loss in the high frequencies and a subtle increase in right ear hearing loss in high frequencies. Because of the configuration of the pattern of loss, he opined that appellant's hearing loss was due to noise exposure, rather than to presbycusis. Dr. Sciacca stated that the noise level at the employing establishment was sufficient to cause hearing loss, but that properly worn hearing protection would have prevented it. He further stated:

“[Appellant] was exposed to noise as a welder at the other jobs he held in nonfederal employment. If he did not use hearing protection his hearing loss is likely to have been caused while on the job at those companies.”

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<sup>1</sup> Appellant's narrative statement indicated that he was in the Alabama Army National Guard from July 1973 to March 2005.

<sup>2</sup> In an unsigned and undated medical history form submitted along with appellant's medical records, his noise exposure was listed as including farming/tractors, power tools and recreational shooting/hunting.

“[Appellant] was also working in noise while at nonfederal employment. It is not clear whether or not he wore hearing protection during those periods. Assuming he did not, he was around significant enough noise to cause hearing loss.”

For these reasons, Dr. Sciacca concluded that appellant’s hearing loss was not due to his federal employment.

On July 19, 2006 the Office forwarded the medical records to Dr. Eric C. Puestow, a Board-certified internist and Office medical adviser. He stated that the claim should not be accepted because Dr. Sciacca found that appellant’s hearing loss was not due to his federal employment noise exposure. Dr. Puestow found that, if appellant did not use hearing protection, his hearing loss was likely to have been caused by his private sector jobs.

By decision dated July 27, 2006, the Office denied appellant’s claim for compensation on the grounds that the medical evidence did not establish that his hearing loss was causally related to the accepted noise exposure. It noted that Dr. Sciacca and the Office medical adviser both found that appellant’s federal employment was not the cause of his diagnosed sensorineural hearing loss. The Office noted that appellant had not provided rationalized medical opinion evidence explaining how the noise at the employing establishment caused his hearing loss.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

### ANALYSIS

Appellant has established that he has sensorineural hearing loss and that he was exposed to occupational noise levels above 85 decibels during his 14 years at the employing establishment. The issue to be resolved is whether the medical evidence establishes that his employment exposure caused or contributed to his hearing loss.

In a second opinion report Dr. Sciacca, a Board-certified otolaryngologist, found that appellant had sustained bilateral mild to moderate high frequency sensorineural hearing loss because of exposure to loud noise. He reviewed the medical records, noting that when appellant began work in 1991 he had normal hearing in his left ear and a mild high frequency loss in the left ear. He stated that the 85 decibel noise level at the employing establishment was sufficient to cause the type of hearing loss sustained by appellant. Dr. Sciacca also stated that, if appellant correctly used the hearing protection provided by the employing establishment, his employment exposure would not have caused hearing loss. He opined that, assuming that he did not use adequate hearing protection, appellant's hearing loss was likely caused by the noise levels at his nonfederal jobs.

In denying appellant's claim, the Office relied on Dr. Sciacca's medical reports to determine that appellant's federal employment was not the cause of and did not contribute to his hearing loss. However, the Board finds that Dr. Sciacca's opinion is equivocal as to the causal relationship between appellant's hearing loss and his federal employment. Dr. Sciacca did not provide a clear explanation of why work-related noise exposure, which he found to be sufficient to cause appellant's hearing loss, was not a contributing factor. He stated that the federal employment would not have caused hearing loss if appellant had used hearing protection properly. This opinion does not foreclose the possibility that appellant's exposure to noise at the employing establishment contributed to his hearing loss. The Board notes that any contribution of employment factors is sufficient to establish the element of causal relation.<sup>7</sup> The Board, therefore, finds that Dr. Sciacca's medical opinion is not sufficiently rationalized to exclude causal relationship. The case will be remanded to the Office for further development of the medical evidence. After such further development as the Office deems necessary, an appropriate decision should be issued regarding the issue of whether appellant sustained a hearing loss causally related to factors of his federal employment.

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<sup>6</sup> *Id.*

<sup>7</sup> *L.R.*, 58 ECAB \_\_\_\_ (Docket No. 06-1942, issued February 20, 2007).

**CONCLUSION**

The Board finds that this case is not in posture for a decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 27, 2006 is remanded for further development of the medical evidence.

Issued: May 17, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board